

FILED**UNITED STATES DISTRICT COURT SEP 04 2020**

for the

Eastern District of North Carolina

PETER A. MOORE, JR., CLERK
US DISTRICT COURT, EDNC
BY S DEP CLK

Southern Division

GARY L SWANSONGary L Swanson
Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Carolina Fresh Water LLC **Sid Smith (owner)**
Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Case No.

7:20-CV-163-BO

(to be filled in by the Clerk's Office)

Jury Trial: (check one) ☐ Yes ☒ No**COMPLAINT FOR VIOLATION OF FAIR LABOR STANDARDS****I. The Parties to This Complaint****A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	Gary L Swanson
Street Address	310 N Front St Ste 4-8
City and County	Wilmington -New Hanover
State and Zip Code	NC 28401
Telephone Number	910-512-9964
E-mail Address	swansonzsite@gmail.com

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name	Carolina Fresh Water LLC
Job or Title (if known)	
Street Address	2303 W. Meadowbrook Rd Suite #101
City and County	Greensboro Guilford County
State and Zip Code	NC 27407
Telephone Number	336-617-5386
E-mail Address (if known)	

Defendant No. 2

Name	Sid Smith
Job or Title (if known)	Owner-Carolina Fresh Water LLC
Street Address	5925 Farm Pond Rd
City and County	Apex Wake County
State and Zip Code	NC 27523
Telephone Number	
E-mail Address (if known)	

~~Defendant No. 3~~ Attorney for Carolina Fresh Water LLC

Name	Jerry H Walters Jr.
Job or Title (if known)	Attorney-Littler Mendelson P.C.-Shareholder
Street Address	BoA Center 100 N Tyron Street Suite 4150
City and County	Charlotte-Mecklungberg
State and Zip Code	NC 28202
Telephone Number	(704)972-7013
E-mail Address (if known)	jwalters@littler.com

~~Defendant No. 4~~ Attorney For Workman Comp / Hedrick Gardner
INS

Name	Emily C Pappas & Joel Turner
Job or Title (if known)	Attorney-Hedrick Gardner Kincheloe & Garofalo LLP-Raleigh
Street Address	4131 Parklake Ave Suite 300
City and County	Raleigh-Wake Co.
State and Zip Code	NC 27612
Telephone Number	919-719-3750
E-mail Address (if known)	epappas@hedrickgardner.com;jturner@hedrickgardner.com

C. Place of Employment

The address at which I am employed or was employed by the defendant(s) is

Name	Carolina Fresh Water LLC/Speaks Teleservices
Street Address	2303 W Meadowbrook Rd Suite#101
City and County	Greensboro Guilford County
State and Zip Code	NC 27402
Telephone Number	(336)617-5386

II. Basis for Jurisdiction

This action is brought pursuant to (check all that apply):



Fair Labor Standards Act, as codified, 29 U.S.C. §§ 201 to 209.



Relevant state law



Relevant city or county law

III. Statement of Claim

State as briefly as possible the facts of your case. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. Nature of employer's business:
Plumbing-City & Well Water Filtration Systems

B. Dates of employment:
Aug 2018 to July 6 2019

C. Employee's job title and a description of the kind of work done:
Sales and Plumbing Installation and Service

D. Rate, method, and frequency of wage payment:

Commission and Piece Work

- E. Number of hours actually worked each week in which a violation is claimed:
Approx 60 hours

- F. Description of the alleged violation(s) (check all that apply):



Failure to pay the minimum wage (explain)
\$684.00 Week (FLSA) for Professional Plumber (NCP1#30515)



Failure to pay required overtime (explain)
As local area plumbing installer and service respondent I was tasked with shop and van stock and inventory which often was expected to be done without compensation.



Other violation(s) (explain)
Employer Retaliation for filing a complaint with NC State Board for Plumbing Contractors.
Employer Retaliation for filing Form 33 'Notice of Injury' with NC Industrial Commission
NC IC File No 19-735402 et al Claim #Y97C47203 (Hartford Insurance) Exhibit B
NC Dept of Labor File #51337,51338,51339,51340
EEOC Charge No 435-2019-00930

- G. Date(s) of the alleged violation(s):
From March 2019 to Present

- H. Additional facts:

Stafford v Carolina Fresh Water LLC (North Carolina Middle District Court) Case 1:19-cv-00562
Judge: Thomas D Schroeder ; Referred L Patrick Auld
Nature of Suit 710 Labor- Fair Labor Standards Act 29:201 Denial of Overtime Compensation
Case Filed: May 31 2019 Case Terminated Jun 17, 2020
Wake County Case 2019-0837 (State Board of Examiners for Plumbing Heating and Fire Sprinkler
Contractors vs Freeman & Carolina Fresh Water LLC) (Exhibit A)
Documents & Exhibits in NC Eastern District Southern Division Case No.7:19-CV-241-FL;No
7:19-CV-242-FL; 7:19-CV-243-FL;7:19-CV-244-FL;19-CV-245-FL
Documents & Exhibits in 4th District Court of Appeals 20-1216;20-1217;20-1218;20-1232;20-1233

NC Dept of Justice File # CP-20-02628

US District Court Southern Division No 7:20-CV-
Case 7:20-cv-00163-BO Document 1 Filed 09/04/20 Page 4 of 7 45-M

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

I Seek Compensatory/Liquidated Damages of \$135,556 for Back Pay 2018, 2019 and Future Pay 2020 (NC Avg wages for P1 Plumber), Includes Administrative/Legal Advocate/Medical Fees

On March 13 2020, the president declared an emergency for COVID-19 under Section 201 and 301 of the National Emergencies Act. NC Governor Cooper ordered 'Stay at Home Orders'; Telecommuting is not possible for NC Licensed Service Plumbers.

I Seek Exemplatory & Special Damages of \$542,224 for Permanant Disability (Veterans Admin rating dated Oct 28 2019). For Intentional Infliction of Financial & Emotional Distress. Future Vocational & Career Re-training and Ongoing medical expenses. I also seek any additional remedies that may be allowed by NC and/or Federal Law against Littler Mendelson P.C. and Hedrick Gardner Kincheloe & Garofalo LLP for Defamation, Libel & Slander

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 09/02/2020

Signature of Plaintiff

Printed Name of Plaintiff

Gary Swanson

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: **Gary L. Swanson**
310 N Front St Ste 4-8
Wilmington, NC 28401

From: **U.S. EEOC-Raleigh Area Office**
434 Fayetteville Street, Suite 700
Raleigh, NC 27601



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

435-2019-00930

J. E. Morales,
Senior Federal Investigator

(919) 856-4152**THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:**

The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission
J. E. Morales
 For: **Glory Gervacio Saure,**
Area Office Director

Digitally signed by J. E. Morales
 DN: cn=J. E. Morales, ou=U.S. EEOC, ou=Raleigh Area
 Office, email=jorge.morales-mendez@eEOC.gov, c=US
 Date: 2020.08.12 11:50:27 -04'00'

08/14/2020

(Date Mailed)

Enclosures(s)

cc: **Jerry H. Walters Jr., Esq.**
Attorney
LITTLER MENDELSON, P.C.
100 North Tryon Street
Suite 4150
Charlotte, NC 28202

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: Agency(ies) Charge No(s): <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div> <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC </div> <div style="text-align: right;"> 435-2019-00930 </div> </div>	
null <i>State or local Agency, if any</i>		and EEOC	
Name (indicate Mr., Ms., Mrs.) Mr. Gary L Swanson		Home Phone (910) 512-9964	Year of Birth 1968
Street Address City, State and ZIP Code 915 Dock St, WILMINGTON, NC 28401			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name CAROLINA FRESH WATER LLC		No. Employees, Members 15 - 100	Phone No. (336) 617-5386
Street Address City, State and ZIP Code 2303 W. Meadowview Rd Suite 101, GREENSBORO, NC 27407			
Name		No. Employees, Members	Phone No.
Street Address City, State and ZIP Code			
DISCRIMINATION BASED ON (Check appropriate box(es).) <div style="display: flex; flex-wrap: wrap; justify-content: space-between;"> <div><input type="checkbox"/> RACE</div> <div><input type="checkbox"/> COLOR</div> <div><input type="checkbox"/> SEX</div> <div><input type="checkbox"/> RELIGION</div> <div><input type="checkbox"/> NATIONAL ORIGIN</div> <div><input checked="" type="checkbox"/> RETALIATION</div> <div><input checked="" type="checkbox"/> AGE</div> <div><input checked="" type="checkbox"/> DISABILITY</div> <div><input type="checkbox"/> GENETIC INFORMATION</div> <div><input type="checkbox"/> OTHER (Specify)</div> </div>		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 04-03-2019 07-06-2019 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)). <p>I. I was hired by the above named employer in August 2018, and last held the position of Plumbing Installer. On or around April 3, 2019, Owner Sid Smith offered me the Plumbing Supervisor position with the same salary of the previous supervisor. I was aware of what the salary entailed. On April 5, 2019, Mr. Smith rescinded his salary offer, and stated that he would only pay me \$200 a week. I declined the position. Shortly thereafter, James Istre became the Plumbing Supervisor. Mr. Istre is not qualified for the position. On July 1, 2019, I complained to Mr. Smith about hiring and Human Resources practices, as well as being passed over for master licensure status. On July 6, 2019, I was discharged.</p> <p>II. I was given no reason why I was discharged.</p> <p>III. I believe that I have been discriminated and retaliated against because of my age (50), in violation of the Age Discrimination in Employment Act of 1967, as amended.</p>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies (if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT	
Digitally signed by Gary Swanson on 10-16-2019 06:18 PM EDT		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	